PUBLIC PROSECUTOR v. KOO GEE LEONG & ORS.

[A.C.J. (Adams J.) July 17, 1961]

[Muar — Criminal Appeal No. 39 of 1961]

Penal Code, s.160 — Affray by fighting in public — Whether there must be disturbance of public peace for charge to be upheld — Position of person who is assaulted but who does not retaliate.

When there is a fight in a public place with blows struck, there is a disturbance of the peace and no further proof by the prosecution is necessary.

If a person is attacked by another in a public place and he makes no retaliation whatsoever, he cannot be guilty of fighting in public.

CRIMINAL APPEAL.

Hamzah bin Dato' Abu Samah (Deputy Public Prosecutor) for the appellant.

C. Paramjothy for the 1st respondent.

Miss Mary Lim for the 2nd–7th respondents.

Adams J.: This was an appeal by the Deputy Public Prosecutor against the acquittal by the learned Magistrate, Segamat, of 7 persons who were charged with an affray by fighting in public contrary to section 160 of the Penal Code.

The facts are that on the evening of the 20th September, 1960, at Jalan Omar, Pekan Jabi, Segamat there was a political meeting in connection with the recent Town Council elections. Apparently members of the rival party created a disturbance by driving motor cars and motor cycles past the area of the meeting sounding their horns violently. One of the prosecution witnesses got up on the platform and appealed to the rival party not to drive the vehicles and sound their horns noisily. The first defendant who was taking part in the meeting on his way home was attacked by the other six defendants. The six defendants who were from the rival party also attacked the second witness for the prosecution who managed to break loose and run away.

The Magistrate found that there had been a fight between two or more persons and that the fight was in a public place but refused to call on the defence because he said that there was no evidence that the fight must have disturbed the public peace. It was because of this finding that the learned Deputy Public Prosecutor appealed.

I think the learned Magistrate had misunderstood the commentary given in *Ratanlal* (19th Edition), pages 372 & 373. It says this:

'Disturb the public peace.' — It is essential that there must be a disturbance of the public peace. — The offence under this section postulates the commission of a definite assault or breach of the peace. Mere quarrelling in a street over money matters without exchange of blows is not sufficient.

This clearly postulates that once there has been a fight with blows struck, there has been disturbance of the peace and no further proof by the prosecution is necessary. This is also so in England.

Under the English Common Law an affray is a public offence to the terror of the Queen's subjects and all the prosecution has to prove is that the prisoners fought in a public street or highway. (See *Archbold*, 23rd Edn., p. 1308). *

The learned Magistrate was therefore wrong in holding that there was no case to answer in the case of defendants 2, 3, 4, 5, 6 and 7. He was however correct (but for the wrong reason) in holding that there was no case to answer in the case of Koo Gee Leong the 1st defendant because he was attacked by the other 6 defendants and in so far as the evidence of the prosecution goes he retaliated in no way whatsoever and therefore cannot be said to have been fighting.

The learned Deputy Public Prosecutor has said that he does not wish to take the matter any further. He merely wishes the Magistrate's erroneous conception of what had to be proved in a case of this nature be put right. Although, therefore, I would allow the appeal, I make no order thereon.

Appeal allowed.

Solicitors: *P. T. Wong & Co.; L. Rayner.*

* See now 24th Edn., p. 1343.

TAN CHWEE SENG v. REGINA

[A. Cr. J. (Rose C.J.) August 9, 1961]

[Singapore — Magistrate's Appeal No. 92 of 1961]

Secret Society — Accused having tattoo mark used by member of Secret Society — Accused to give acceptable explanation — No supporting evidence adduced to corroborate appellant's story — Societies Ordinance (Cap. 228), s.12.

Sentence — Whether maximum sentence justified.

The appellant was convicted of being a member of an unlawful secret society under section 12(1) of the Societies Ordinance. The Prosecutor produced expert evidence to show that the accused had on his right arm a tattoo mark which identified him as a member of the 24 Group Secret Society. The appellant stated that he was not a member of a secret society and that he had acquired the mark some ten years previously. He also produced his relatives to give evidence to the effect that he was not a member of the said secret society.

Held: it is for the accused to give an acceptable explanation as to why the tattoo mark is to be found upon his person and as in this case no supporting evidence was adduced to corroborate the appellant's statement that he received the tattoo mark some ten years ago and was always unaware of its significance, the conviction must stand.

Cases referred to:—

(1) *R.* v. *Lim Chin Shang*, [1957] M.L.J. 125.

(2) *Wong Thin* v. *Public Prosecutor*, [1958] M.L.J. 29.

MAGISTRATE'S APPEAL.

David Marshall for the appellant.

A. W. Ghows (Senior Crown Counsel) for the respondent.

Rose C.J.: The appellant was convicted in the First Criminal District Court of being a member of an unlawful society, to wit, the 24 group secret society, contra section 12(1) of the Societies Ordinance (Chapter 228).

The case for the prosecution was that there was tattooed upon the upper part of his right